

June 21, 2006 incident. In submitting the claim, the employing establishment noted that the claim was submitted as a traumatic injury at the insistence of appellant's attorney although the "nature of the injury requires" an occupational disease claim.

In a letter dated October 26, 2009, OWCP requested additional evidence regarding the claim. Appellant did not respond.

By decision dated November 30, 2009, OWCP denied the claim on the grounds that it was not timely filed under 5 U.S.C. § 8122. It found that appellant should have been aware of a relationship between her employment and the claimed condition on the date of the incident, June 21, 2006. OWCP found that the evidence did not support a finding that her immediate supervisor had actual knowledge within 30 days of the injury.

Appellant's representative requested a telephonic hearing that was held on March 18, 2010. At the hearing, he argued that appellant's case was timely filed as it was a traumatic injury with latent disability. Appellant's representative asserted that the time for filing a claim did not begin to run until appellant had a compensable disability or was aware, or should have been aware of a relationship between the disability and employment. He argued that appellant was not disabled until she had a wage loss in 2009. The representative also asserted that appellant was not aware that she had post-traumatic stress disorder, depression with anxiety and anxiety disorder until her recent diagnosis. Appellant explained that on June 21, 2006 there was a shooting at the employing establishment in which an agent and a correctional officer were killed. She noted seeing both dead bodies after the incident. Appellant stated that, while the situation was extremely disturbing, she served as the chief executive officer for the on scene incident and worked 12-hour shifts for two and a half weeks afterwards. She stated that, after the incident, she remained as the only associate warden and "worked in the environment another whole year after the incident" until she was transferred. Appellant noted that she lived on the "reservation" and "never had any closure" as she was "in a constant reminder of what happened." She noted seeing a doctor and asked for something to help her cope as she had trouble sleeping as was agitated and stressed due to the incident. Appellant stated that she had no prior anxiety problems. She noted having the same problems over and over and "every time I closed my eyes I'd wake up and even in my dreams I could see those staff lying on the ground dead." Appellant testified that she attempted to transfer to another facility immediately after the shooting but was advised that it was not an immediate option. She eventually transferred in May 2007 but continued having headaches, anxiety and stress. Appellant stated that, in the summer of 2009, she developed an upper respiratory infection and her physician, Dr. Matthew Soff, a Board-certified internist, placed her off work for six weeks and recommended a psychiatrist. She testified that she went to a physician on June 23, 2006, and was prescribed Ambien and Xanax after the shooting, as she could not sleep. Appellant testified that the 2009 diagnosis of anxiety and stress was associated with the 2006 shooting.

In a February 15, 2010 letter, appellant described the shooting incident that occurred on June 21, 2006. She reiterated that, when she arrived on the scene, she saw two dead bodies and a wounded lieutenant. Appellant explained that the situation was disturbing and upsetting and that she "felt this was a normal reaction that would pass over time. However, I began suffering headaches and my anxiety and stress seemed to be increasing, I did not associate this with any

particular thing.” She also noted that, while she eventually received a transfer in May 2007, her headaches, anxiety and stress levels did not decrease as she thought they would. Appellant alleged that she did not associate her condition to the June 2006 incident until September 2009, when she met with her physicians. She advised that at the “end of the summer in 2009, in September, I realized that my mental condition was related to the incident in June 2006.” Appellant noted that she last worked on July 16, 2009.

In an April 8, 2010 letter, appellant’s representative reiterated his arguments that the claim was timely filed. He submitted additional evidence that included nurses’ notes which stated that appellant received treatment for a migraine, low blood pressure and anxiety on May 14, 2007.

In a report dated April 1, 2010, Dr. Daniel Bober, a Board-certified psychiatrist and neurologist, diagnosed chronic post-traumatic stress disorder, unspecified depressive disorder, and generalized anxiety disorder. He explained that appellant was involved in a work-related shooting incident and did not receive adequate support and counseling after the event. Dr. Bober opined that the shooting episode at work in 2006 caused her diagnoses. He further noted that it would not be unusual to suffer a traumatic event but not recognize the manifestations for “quite some time.” Dr. Bober explained that, if the condition was not treated, it was possible for an individual not to associate the source or causation until they received professional help, as was the case in appellant’s situation. He noted that appellant last worked on July 16, 2009 and advised that appellant could not presently work but that “she could return to work in a nonstressful environment, outside of the federal prison system, within a few months.

By decision dated June 8, 2010, OWCP’s hearing representative affirmed OWCP’s November 30, 2009 decision.

LEGAL PRECEDENT

Section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.² Section 8122(b) provides that, in latent disability cases the time limitation does not begin to run until the claimant is aware or by the exercise of reasonable diligence should have been aware, of the causal relationship between the employment and the compensable disability.³ Even if a claim is not timely filed within the three-year period of limitation, it would still be regarded as timely under section 8122(a)(1) if the immediate superior had actual knowledge of the injury or death within 30 days or written notice of the injury as specified in section 8119 was provided within 30 days.⁴

In the case of occupational disease, the time for filing a claim begins to run when the employee first becomes aware or reasonably should have been aware, of a possible relationship between his condition and his employment. When an employee becomes aware or reasonably

² 5 U.S.C. § 8122(a).

³ *Id.* at § 8122(b).

⁴ *Id.* at § 8122(a)(1); *see also Larry Young*, 52 ECAB 284 (2001).

should have been aware that he has a condition which has been adversely affected by factors of his federal employment, such awareness is competent to start the limitation period even though he does not know the precise nature of the impairment or whether the ultimate result of such affect would be temporary or permanent.⁵ Where the employee continues in the same employment after he or she reasonably should have been aware that he or she has a condition which has been adversely affected by factors of the federal employment awareness, the time limitation begins to run on the date of the last exposure to the implicated factors.⁶ The requirement to file a claim within three years is the claimant's burden and not that of the employing establishment.⁷

ANALYSIS

It is well established that a claim for compensation need not be filed on any particular form. A claim may be made by filing any paper containing words which reasonably may be construed or accepted as a claim.⁸ Although appellant filed a claim for a traumatic injury, OWCP should have developed her claim as an occupational disease claim.⁹ The Board also notes that the employing establishment suggested that the claim was an occupational disease claim.

Appellant, an associate warden, alleged that she sustained post-traumatic stress disorder as a result of a shooting incident which occurred on June 21, 2006. She did not file the claim form until October 2, 2009, as she was not aware that her condition stemmed from the June 21, 2006 shooting incident. Appellant asserts that she was not aware that her condition was work related until late summer 2009 and that she did not have disability until 2009.¹⁰ OWCP found that the time for filing a claim began to run on the date of the June 21, 2006 incident. It also found that her immediate supervisor did not have actual knowledge within 30 days of the injury. OWCP concluded that the claim was not timely filed within the three-year period of limitations.

However, OWCP should have treated the claim as an occupational disease claim involving latent disability. The term latent disability refers to an occupational disease or condition produced by repeated stress or exposure to conditions of the work environment which produce cumulative or increasingly deleterious effect upon the employee, of which she may not

⁵ *Larry E. Young*, *supra* note 4.

⁶ *Id.*

⁷ *Debra Young Bruce*, 52 ECAB 315 (2001).

⁸ *D.D.*, 57 ECAB 734, 738 (2006).

⁹ See 20 C.F.R. § 10.5(q) (defines occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift); 20 C.F.R. § 10.5(ee) (defines traumatic injury as a condition caused by a specific event or incident, or series of events or incidents, within a single workday or shift).

¹⁰ See 5 U.S.C. § 8122(b) (provides that the time for filing in latent disability cases does not begin to run until the claimant is aware or by the exercise of reasonable diligence should have been aware, of the causal relationship between the employment and the compensable disability).

be immediately aware.¹¹ Appellant explained that as a result of the June 21, 2006 incident, the sight of the dead bodies was extremely disturbing. She attributed her condition to not only the shooting incident, but in dealing with the aftermath of the shooting, dealing with staff, acting as the chief investigator on the scene and working 12-hour shifts for weeks after the incident. Appellant stated that she remained in charge of the prison, lived at the prison and was unable to transfer for almost a year, until May 2007. The record supports that her work duties required her to continue working in the environment in which the shooting incident occurred and that her duties required her to deal with the investigation of the shooting in this environment until her May 2007 transfer. Thus, the repeated exposure continued until May 2007.

Appellant also testified that she went to a doctor and requested medication to help her be calm and cope because she had trouble sleeping as she was agitated and feeling stressed. Medical records show that she was treated for anxiety on May 14, 2007. The record reflects that, on May 14, 2007, appellant was treated for anxiety and became aware of her condition and its relationship to her employment.

The Board finds that the time for filing appellant's claim for compensation began to run in May 2007 when she had her last exposure to the work environment that caused the claimed condition and when she also received medical treatment that made her aware that her anxiety condition was due to her employment. As appellant filed her claim on October 2, 2009, her claim was timely filed within the three-year period. The case will be remanded for OWCP to further develop her timely occupational disease claim. Following this and any further development deemed necessary, OWCP shall issue an appropriate merit decision.

CONCLUSION

The Board finds that appellant's claim was timely filed with the applicable time limitation provisions of FECA.

¹¹ *Larry J. Thomas*, 44 ECAB 291 (1992). See also *Mary Crawford*, Docket No. 05-826 (issued July 1, 2005).

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision.

Issued: August 1, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board